



In the Matter of:

SYED M. A. HASAN,

ARB CASE NO. 99-097

COMPLAINANT

ALJ CASE NO. 99-ERA-17

v.

DATE: September 16, 1999

**COMMONWEALTH EDISON CO.,
AND THE ESTES GROUP, INC.,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainants:

Syed M. A. Hasan, *Madison, Alabama, pro se*

For the Respondents:

Donn C. Meindertsma, Esq., *Winston & Strawn, Washington, D.C.*
Burr Anderson, Esq., *Anderson & Thomas, Chicago, Illinois*

ORDER DENYING INTERLOCUTORY APPEAL

Complainant Syed M.A. Hasan filed an "Emergency Motion" to reverse the Administrative Law Judge's order granting a change of location for the administrative hearing from Huntsville, Alabama, to Chicago, Illinois, in this case arising under the employee protection provision of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. §5851 (1994). The Administrative Law Judge ("ALJ") originally set the hearing in this matter for Huntsville, Alabama, which is within 75 miles of Hasan's residence in Madison, Alabama. *See* 29 C.F.R. §24.6(c). However, upon reconsideration, the ALJ concluded that:

[i]n weighing the convenience of all parties and witnesses, it is my opinion that this hearing can most expeditiously be heard and will cause less inconvenience for the greatest number of persons involved if tried in Chicago, Illinois. Any inconvenience to

Complainant is overridden by the fact that [Respondent Commonwealth Edison] has offered to pay for Complainant's air fare to and from Chicago, Illinois, for the hearing, provide him with lodging while there and pay a per diem of \$25 per day.

ALJ Order Granting ComEd's Motion for Reconsideration and Order Granting Change of Venue at 2-3.

Hasan's motion is in effect an interlocutory appeal of the ALJ's Order Granting Change of Venue. The Secretary and the Administrative Review Board have held many times that interlocutory appeals are generally disfavored and that there is a strong policy against piecemeal appeals. *Carter v. B & W Nuclear Technologies, Inc.*, Case No. 94-ERA-13, Sec'y Order Sept. 28, 1994, slip op. at 3-4, and cases discussed therein; *Allen v. EG&G Defense Materials, Inc.*, ARB Case No. 98-073, ALJ Case No. 1997-SWD-8 & 10, ARB Order Sept. 28, 1998. The Board should be particularly chary of interfering with an ALJ's control over the time, place and course of a hearing, but rather should support the sound exercise of an ALJ's broad discretion in this area. See 29 C.F.R. §24.6(c); 29 C.F.R. §18.27(c) (1996).

Accordingly, Hasan's motion to set aside the ALJ's order granting a change of hearing location is **DENIED**.

SO ORDERED.

PAUL GREENBERG

Chair

CYNTHIA L. ATTWOOD

Member

E. Cooper Brown, Member, Concurring:

I concur with the majority's opinion, as Mr. Hasan's "Emergency Motion" is effectively an interlocutory appeal seeking Board review of the ALJ's determination regarding the location of the hearing. Such appeals, as the majority notes, generally are disfavored. For this Board member to have been convinced that the necessary threshold had been met for Board review of the merits of Hasan's appeal, it would have been helpful if he first had sought and obtained the ALJ's certification for interlocutory appeal of the question of law presented, as allowed under 29 C.F.R. §18.29(a). See *Porter v. Brown & Root*, 91-ERA-4 (Sec'y Order to Show Cause, Sept. 29, 1993); *Plumley v. Federal Bureau of Prisons*, 86-CAA-6 (Sec'y Order Denying Interlocutory Appeal, Apr. 29, 1987).

E. COOPER BROWN

Member